

A3Au255
8.N55-2
Copy 1

South Carolina General Assembly



Legislative Audit Council

S. C. STATE LIBRARY

APR 25 1988

STATE DOCUMENTS



The State of South Carolina
General Assembly
Legislative Audit Council
A Statewide Review of
Noncompetitive Procurements
April 20, 1988

THE STATE OF SOUTH CAROLINA

GENERAL ASSEMBLY

LEGISLATIVE AUDIT COUNCIL

A STATEWIDE REVIEW OF NONCOMPETITIVE PROCUREMENTS

TABLE OF CONTENTS

	<u>Page</u>
<u>REPORT SUMMARY</u>	1
<u>CHAPTER I - SOUTH CAROLINA'S PROCUREMENT PROCESS</u>	3
Methodology.....	3
<u>CHAPTER II - SOLE SOURCE PROCUREMENT</u>	6
Methodology.....	7
Conclusions.....	7
Consultant Review.....	8
Prior Notice.....	11
Reporting Requirements.....	12
Inadequate Explanations.....	12
Efforts to Solicit Competition.....	13
<u>CHAPTER III - EMERGENCY PROCUREMENT</u>	15
Methodology.....	16
Conclusions.....	16
Inadequate Planning.....	16
Procurements Under \$1,500.....	17
Procurements Not Legitimate Emergencies.....	18
Inadequate Justifications.....	20
Late Justifications.....	21
<u>CHAPTER IV - EXEMPTIONS FROM THE PROCUREMENT CODE</u>	22
Exemptions Needing Review.....	22
Agencies.....	22
Higher Education.....	23
Insurance Reserve Fund.....	23
Professional Services.....	23
Fresh Food Products.....	25
Aircraft Maintenance.....	25
Criteria for Exemptions.....	25
Review of Exemptions.....	26
<u>CHAPTER V - OTHER PROCUREMENT ISSUES</u>	27
Procurement Audits.....	27
Two Procurement Information Systems.....	28
Protest Process.....	30
Frivolous Protests.....	31

TABLE OF CONTENTS (CONTINUED)

	<u>Page</u>
<u>APPENDICES</u>	32
A - List of Tables.....	33
B - Comments from the Division of General Services.....	34
C - Comments from the Medical University of South Carolina	37

REPORT SUMMARY

Members of the General Assembly requested that the Audit Council review the state's procurement system for noncompetitive purchases. Included in the review were sole source procurements, emergency procurements, and exemptions from the Procurement Code for agencies, products, and services. Samples were drawn from procurements of the 11 agencies which comprised over 80% of the sole source expenditures in FY 85-86, accounting for \$42 million of \$51 million in sole source expenditures for all state agencies.

The Audit Council found that, in general, agencies are using the sole source and emergency procurement procedures in compliance with state law.

- Approximately 78% of the 187 sole source purchases reviewed were appropriate, in that the product or service could only have been procured from one source. Of the inappropriate sole source purchases, one-half were for computer maintenance contracts and equipment (see p. 7).
- Agencies used emergency procurement procedures unnecessarily in approximately 25% of the cases reviewed (see pp. 16, 18). Most resulted from inadequate planning by the agencies.

The Council also reviewed sole source consultant contracts.

- Based on its sample, the Council projects that one-half of the sole source consultants reported in the state should not have been reported as such since they are exceptions to the sole source reporting requirement. These exceptions include sole sources specified by state and federal grant agreements and procurements between state agencies. As a result, the amount of business the state does with sole source consultants is greatly overstated (see p. 8).
- However, the Council did find that a significant proportion, 32%, of the consultant contracts either should have been competitively procured, or the individuals should have been hired as employees (see p. 10).

Recommendations were made for improved and more equitable procedures:

- Agencies are not required to give prior public notice of sole source purchases, which greatly inhibits the opportunity for vendors to compete. The Audit Council

recommends all state agencies be required to give prior public notice of sole source awards over \$5,000 in South Carolina Business Opportunities (see p. 11).

- When justifying sole source procurements, agencies are not required to document their efforts to identify potential vendors. It is recommended that agencies be required to do so (see p. 13).

The Council reviewed exemptions to the Procurement Code which consist primarily of goods and services, but also include the entire operations of four state agencies.

- The Council found that exemptions for the four agencies, as well as for certain higher education purchases, fresh food products, the Insurance Reserve Fund, and aircraft maintenance, should be reexamined. The Council recommends that all exemptions to the Code, including those for professional services, be periodically reevaluated by the Division of General Services and renewed, as needed (see p. 22).

The following chapters discuss, in detail, these and related areas. The Council appreciates the assistance of the Division of General Services and particularly, the staffs of the Materials Management Office and the Office of Audit and Certification.

CHAPTER I
SOUTH CAROLINA'S PROCUREMENT PROCESS

South Carolina's procurement system has been governed since 1981 by the Consolidated Procurement Code: South Carolina Code of Laws §11-35-10 et seq. Two offices within the Budget and Control Board's Division of General Services play a central role in the procurement process, as described below.

The Materials Management Office (MMO) procures commodities and services for the Budget and Control Board and for other agencies, whenever the cost of the purchase exceeds the agencies' certification limits. Certification limits are the levels below which agencies are allowed to conduct their own procurements. In addition, the Office implements the requirements of the Consolidated Procurement Code and maintains quarterly reports of agencies' sole source and emergency procurements, and trade-in sales. The Materials Management Office also operates an automated procurement system (see p. 28) and trains agency procurement officers.

The Office of Audit and Certification, within MMO, conducts procurement audits of agencies and large school districts. These audits include reviews of all sole source and emergency procurements. Based on the results of these audits, the Office recommends agency certification levels which range from \$2,500 to \$50,000. Competitive purchases above the certification levels are made by the Materials Management Office.

The Procurement Review Panel consists of members of the Budget and Control Board, the Legislature, and the general public. It conducts administrative reviews of protests concerning the solicitation and award of contracts, debarment or suspensions, or breach of contract controversies (see p. 30).

Methodology

In order to review the state's procurement system for noncompetitive purchases, the Audit Council collected quarterly

reports of sole source and emergency procurements made by 11 agencies, as listed in Table 1. These agencies, as shown in column four, accounted for over 80% of the total sole source expenditures reported in FY 85-86. As Table 1 indicates, the first five agencies accounted for 66% of the almost \$51 million in sole source procurements reported that year. When the next six agencies are included, the total rises to 83%.

TABLE 1
STATEWIDE SOLE SOURCE PROCUREMENTS BY AGENCY
FY 85-86

<u>Agency</u>	<u>Number of Procurements</u>	<u>Dollars</u>	<u>Percent of Total Dollars</u>
Medical University	2,710	\$11,368,144	22%
University of South Carolina	955	8,135,325	16
Clemson University	651	5,456,541	11
Department of Social Services	241	4,826,753	9
Department of Health and Environmental Control	216	3,864,564	8
Tec Board and Tec Schools	439	2,416,354	5
Department of Highways and Public Transportation	149	1,555,696	3
Budget and Control Board			
Information Resource Management	89	1,403,140	3
Department of Mental Health	80	1,100,270	2
Department of Youth Services	21	1,016,304	2
Governor's Office	37	942,013	2
TOTAL 11 Agencies	<u>5,588</u>	<u>\$42,085,404</u>	83%
TOTAL Other Agencies	<u>2,015</u>	<u>\$ 8,905,756</u>	17%
TOTAL All Agencies	<u>7,603</u>	<u>\$50,990,860</u>	100%

Source: Based on "Sole Source Procurement Annual Report, FY 85-86"
by General Services' Office of Audit and Certification.

The Audit Council compiled two sole source data bases for procurements made July 1, 1985 through March 31, 1987. A data base of 450 of approximately 4,500 procurements made by the Medical University of South Carolina (MUSC) was compiled separately due to the large number of sole source procurements made by this agency. The other sole source data base contained all 4,606 procurements reported by the agencies listed in Table 1, excluding MUSC. The emergency procurement data base

consisted of 490 transactions reported from July 1, 1985 through March 31, 1987 by the same 11 agencies, including MUSC.

CHAPTER II
SOLE SOURCE PROCUREMENT

Any good or service may be purchased without competition if certain conditions are met. According to §11-35-1560 of the South Carolina Code of Laws, a "sole source" purchase may be made when the authorized official in an agency determines in writing the basis for the proposed sole source procurement. The law further requires an explanation as to why no other vendor will be suitable or acceptable. Section 11-35-1560 also states, "In cases of reasonable doubt, competition must be solicited." Sole source procurement procedures, therefore, are to be used only as a last resort.

According to the United States General Accounting Office (1987):

Government is best served when all potential contractors have the opportunity to compete equally with others for its business. Contracts should not be awarded on the basis of favoritism, but should go to those submitting the most advantageous offers to the government. Offering all contractors the opportunity to compete helps to minimize collusion and ensure that the government pays fair and reasonable prices.

The following table shows the level of sole source purchasing for all state agencies from FY 83-84 through FY 86-87.

TABLE 2
STATEWIDE SOLE SOURCE PURCHASES
FY 83-84 THROUGH FY 86-87

<u>Purchases</u>	<u>FY 83-84</u>	<u>FY 84-85</u>	<u>FY 85-86</u>	<u>FY 86-87</u>
Number	6,391	6,986	7,603	6,545
Cost	\$31,956,378	\$48,262,383	\$50,990,860	\$52,057,599

Source: Annual Reports on Sole Source Procurements, General Services' Office of Audit and Certification.

For FY 85-86, the largest expenditures were in the areas of nonpersonal services (including equipment repairs and maintenance), computer equipment and consulting services. These three categories, totalling more than \$25 million, accounted for 50% of the amount spent by agencies on sole source purchases.

Methodology

The Audit Council conducted a random sample of the 11 state agencies which had the largest expenditures for sole source purchases in FY 85-86 (see p. 4). The Medical University of South Carolina (MUSC) had 2,710 sole source purchases in FY 85-86. The Council sampled and examined, in detail, 122 sole source procurements from the MUSC data base of 450 procurements. The Council also reviewed, in detail, 187 of 2,878 sole source purchases made by the remaining ten agencies in FY 85-86.

In evaluating the sole source procedure and how well agencies follow it, Council staff reviewed agency files, collected purchase orders and sole source justification statements for the sample, and interviewed agency purchasing officials. General Services' Offices of Audit and Certification and Information Technology Management assisted in determining whether many of the purchases were available from only one source.

Conclusions

The use of the sole source procedure by agencies was appropriate for the majority of the purchases in the samples. For the ten agencies not including the Medical University, 42 (22%) of the 187 purchases were found to be available from more than one source. Of the 122 purchases sampled from the Medical University, 4 (3%) were judged not to be sole sources; however, physician's preference and the highly technical medical requirements for many of the purchases were not questioned because of the limited medical expertise available to the Audit Council.

For the 10 agencies sampled together, 20 (50%) of the 40 purchases made inappropriately as sole sources were for computer maintenance contracts and equipment. Other purchases in the sample that did not qualify as sole sources included three consultant contracts; two software packages; calculators; printing and food expenses for a conference; and rental of carpet and floor cleaning equipment. In the MUSC sample, the agency should not have used the sole source procedure for four purchases: two communications equipment maintenance contracts, one consultant contract, and one purchase of photographic toner.

When purchases are made inappropriately as sole source procurements, it is less likely the state is paying the lowest prices possible. Also, other vendors have no opportunity to bid for state business.

RECOMMENDATION

- (1) STATE AGENCIES SHOULD ENSURE THAT ALL PURCHASES MADE WITH THE SOLE SOURCE PROCEDURE ARE THOSE FOR WHICH THERE ARE NO OTHER VENDORS AVAILABLE.

Consultant Review

In FY 85-86, state agencies spent more than \$9 million in procuring consultants on a sole source basis. Because of this and recent interest in the procurement of consultants without competition, the Audit Council conducted a random sample of 38 sole source consultant contracts totalling \$2,003,183 to determine if these procurements were being made appropriately.

In its sample, the Audit Council found that one-half of the consultant contracts did not need to be reported as sole sources because, according to General Services officials, they were exceptions to the reporting requirement. The inflated number of consultants reported as sole source has overemphasized the total amount of business agencies conduct with consultants on a sole source basis. However, the Council did find that approximately one-third of the consultants should not have been procured on a

sole source basis. Only 16% of the contracts in the sample were both appropriately procured and reported as sole source contracts. The following table shows the distribution of the consultant review results.

TABLE 3
SAMPLE OF SOLE SOURCE CONSULTANTS
FY 85-86

<u>Review Results</u>	<u>Number</u>	<u>Percent</u>	<u>Cost</u>	<u>Percent</u>
Should not have been reported as sole source	20	52%	\$ 899,393	45%
Should have been competitively procured or hired as employees	12	32	826,244	41
Legitimate sole source	<u>6</u>	<u>16</u>	<u>277,546</u>	<u>14</u>
TOTAL	<u>38</u>	<u>100%</u>	<u>\$2,003,183</u>	<u>100%</u>

Source: Legislative Audit Council review of sole source consultants.

In the consultants sample, 20 (52%) of the 38 contracts should not have been reported as sole source procurements. The 20 contracts fell into 4 categories which may appear to fit the definition of a sole source, but do not need to be reported, according to General Services officials. For example, 10 of the 20 were procured with state or federal grant funds, and were earmarked for certain agencies or political subdivisions. The sources of the procurements were stipulated as a condition of receiving the grants; therefore, the agencies could not seek other sources, even if they were available. Similarly, in the second category, the General Assembly required agencies to purchase services from specified contractors. A third category, intergovernmental purchases from one state agency to another, was exempted by the Budget and Control Board from the reporting requirement. In the fourth category, General Services officials

stated that it is unnecessary to report competitive purchases of services with set fee schedules, since there is no price competition.

The Council found that 12 (32%) of the 38 sole source consultants should not have been procured on a sole source basis. Of the 12, 5 consultants could have been procured competitively, including an agency liaison, a firm that raises funds and locates grants for universities, and three consultants hired to conduct studies. The remaining seven consultants should have been hired as employees rather than as sole source consultants. These included two legislative liaisons, a speech writer who was a former employee, a lecturer, and a new employee hired as a consultant several months before starting his job. According to Human Resource Management (HRM) guidelines, these individuals should have been hired as temporary or special contract employees.

The HRM guidelines are based on Internal Revenue Service regulations which define the employee/employer relationship to exist when:

- . . . the person for whom services are performed has the right to control and direct the individual who performs the service, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished.

When agencies inappropriately procure consultants as sole sources, there is no competition and the state could pay more than is necessary. Also, other consultants do not have the opportunity to compete for state contracts. Further, when consultants are hired who are better defined as employees, agencies can circumvent the full-time equivalent (FTE) requirement for the number of employees they are allowed to have by law.

RECOMMENDATIONS

- (2) THE DIVISION OF GENERAL SERVICES SHOULD NOTIFY AGENCIES OF THE TYPES OF NONCOMPETITIVE PURCHASES MADE FROM ONE WHICH DO NOT NEED TO BE REPORTED AS SOLE SOURCE, SUCH AS GRANTS AND INTERGOVERNMENTAL CONTRACTS.
- (3) THE DIVISION SHOULD ISSUE A MEMO TO AGENCIES CLARIFYING THE DEFINITIONS OF EMPLOYEE/EMPLOYER RELATIONSHIPS AND CONSULTANTS.
- (4) STATE AGENCIES SHOULD ENSURE THAT CONSULTANTS ARE COMPETITIVELY PROCURED IN ACCORDANCE WITH STATE LAW.

Prior Notice

In most cases, vendors have no opportunity to compete for state business when agencies use the sole source procedure. This is partly because agencies are not required to give prior public notice of sole source purchases. Also, agency efforts to determine whether multiple sources exist for a product are often limited. In an FY 85-86 sample of 309 sole source purchases by 11 agencies, more than 75% of the justification statements did not show agencies' efforts to find other vendors.

The federal government requires agencies to publish proposed sole source awards for purchases over \$10,000. The Division of General Services has proposed an amendment to state law which would require all pending sole source procurements over \$5,000 to be announced in the South Carolina Business Opportunities publication 15 days prior to awarding a contract. An amendment of this type would be an additional incentive for agencies to seek out vendors. It would also allow vendors to compete for state purchases which would otherwise be made without competition.

RECOMMENDATION

- (5) THE GENERAL ASSEMBLY MAY WISH TO CONSIDER REQUIRING ALL STATE AGENCIES TO GIVE PRIOR PUBLIC NOTICE OF SOLE SOURCE PURCHASES OVER \$5,000.

Reporting Requirements

In its FY 85-86 sample of sole source purchases by 11 state agencies, the Audit Council found that, in most cases, appropriate agency officials completed justification statements in advance for the items to be purchased as sole sources. However, in a substantial number of cases, agencies did not provide adequate explanations for sole source decisions as required by state regulation. Furthermore, if agencies were required to document efforts made to solicit competition, this would better ensure the proper use of the sole source procedure.

Inadequate Explanations

In the sample of the ten agencies not including the Medical University, 50 (26%) of 187 sole source purchases had inadequate explanations or no explanations. The Medical University sample had inadequate explanations or no explanations for 33 (27%) of its 122 sole source purchases. These explanations were inadequate because they restated that the items were sole sources or indicated that other sources were available. State Regulation 19-445.2105 requires agencies to document any sole source decision with "an explanation as to why no other will be suitable or acceptable to meet the need."

Many of the explanations found to be inadequate were statements that the items were sole sources because they were available from only one source. Stating "a sole source is a sole source" does not constitute an explanation since it does not show why no other source will be suitable to meet the agency's need. Other examples of inadequate explanations were based on an item being the "best" available.

- One agency official stated Company A is ". . . the only vendor in the marketplace who can provide such a program that represents levels of expertise, service and performance."
- To justify using only manufacturers to service certain technical equipment, one agency official stated, "Although unsolicited offers to provide maintenance may be forthcoming I must reserve the right to evaluate such offers and to determine that they represent equivalent levels of expertise, service and performance."

General Services' officials have stated that the quality of a good or service is not a basis for a sole source determination. The Request for Proposal procedure should be used when there is more than one vendor and an agency wants to ensure that the quality of the good or service meets its needs.

Without adequate explanations, the public cannot be confident that agencies have sought other vendors for goods and services procured through the sole source procedure. Because there is no price competition when an item is purchased as a sole source, it is incumbent upon agencies to sufficiently document their reasons. Requiring agencies to list vendors contacted as recommended on page 14 would further ensure that explanations for sole source purchases are adequate.

Efforts to Solicit Competition

One way to address the problem of inadequate explanations for sole source purchases would be to make the requirements for explanations more specific. As discussed above, state regulation requires agencies' sole source decisions to be accompanied by an explanation as to why no other vendor will be suitable or acceptable. However, most agencies do not interpret this to require documenting efforts made to solicit competition.

In the Council's samples of sole source procurements made by 11 agencies, more than 75% of the justification statements did not show that agencies solicited competition. In many cases, agencies' explanations contained only a statement that the vendor was the sole source for the item purchased.

Federal law requires agencies to describe efforts made to solicit competition from other possible suppliers before they make sole source determinations. This requirement ensures that agencies have contacted, or made efforts to find, other vendors. Requiring state agencies to list potential vendors contacted would better ensure that sole sources are justified and that the state is getting the most competitive prices for its purchases.

RECOMMENDATIONS

- (6) STATE AGENCIES SHOULD ENSURE THAT EXPLANATIONS FOR SOLE SOURCE PURCHASES ARE ADEQUATE BEFORE PURCHASES ARE MADE.

- (7) THE GENERAL ASSEMBLY MAY WISH TO CONSIDER REQUIRING AGENCIES TO LIST ON SOLE SOURCE JUSTIFICATION STATEMENTS POTENTIAL VENDORS CONTACTED.

CHAPTER III
EMERGENCY PROCUREMENT

Section 11-35-1570 of the South Carolina Code of Laws authorizes the use of emergency procurements when goods or services must be procured quickly to meet unforeseen needs. Emergency procurements are authorized only when there is an "immediate threat to public health, welfare, critical economy and efficiency, or safety." Emergency procurement regulations reduce, but do not eliminate, the requirement for competition.

For FY 85-86, 308 emergency procurements totalling almost \$1.7 million were reported to the Materials Management Office by the 11 agencies whose procurements were examined during this review. For the first three quarters of FY 86-87, these same agencies reported 182 procurements totalling over \$1.6 million. Construction services, nonpersonal services (mostly repairs) and information technology equipment accounted for over one-half (56%) of the total emergency procurement expenditures for these agencies, as shown in Table 4.

TABLE 4
EMERGENCY PROCUREMENTS OF ELEVEN AGENCIES¹

<u>Category</u>	<u>07/01/85 - 06/30/86²</u>	<u>07/01/86 - 03/30/87²</u>	<u>Total</u>
Construction Services	\$ 268,693	\$ 567,782	\$ 836,475 (25%)
Nonpersonal Services	591,362	211,779	803,141 (24%)
Information Technology Equipment	133,620	84,495	218,115 (7%)
TOTAL Other Categories ³	<u>\$ 694,838</u>	<u>\$ 759,222</u>	<u>\$1,454,060 (44%)</u>
TOTAL All Categories	<u>\$1,688,513</u>	<u>\$1,623,278</u>	<u>\$3,311,791 (100%)</u>

¹The 11 agencies are the Medical University, USC, Clemson, Department of Social Services, Department of Health and Environmental Control, TEC Board and Technical Colleges, Department of Highways and Public Transportation, Budget and Control Board Division of Information Resource Management, Department of Mental Health, Department of Youth Services, and the Governor's Office.

²The total number of emergency procurements for these agencies is 308 for FY 85-86 and 182 for the first 3/4 of FY 86-87.

³These include all other goods and services classified by General Services' Commodity Code system.

Source: Legislative Audit Council database derived from quarterly reports submitted to the Materials Management Office.

Because emergency procurements are to be used only when there is "an immediate threat to public health, welfare, critical economy and efficiency, or safety," it is logical that the majority of these procurements occur in the construction and repair categories.

Methodology

The sample selected for detailed examination consisted of 153 (50%) of the 308 emergency procurements made by the 11 agencies during FY 85-86. Five sole source procurements erroneously reported as emergency procurements were eliminated, thereby reducing the sample to 148 procurements. For each procurement in the sample, the Audit Council analyzed the justification statements and purchase orders or requisitions, and other supporting documentation as necessary.

Conclusions

Based on the sample, agencies are, in general, following the procedures for emergency procurements. In a few cases, justification statements were inadequate or emergency procurement procedures were used when there was no immediate and serious threat to state government. These are infrequent instances of each type of problem, however, and do not appear to represent weaknesses in the system as a whole. Problems were found more frequently in two areas: emergency procurements resulting from poor planning, and the use of emergency procurements instead of small procurement procedures. The problems found are described below.

Inadequate Planning

In 30 (20%) of 148 cases examined, the use of emergency procurement methods was inappropriate because, with proper planning, the need could have been anticipated. Office of Audit and Certification audits have stated "The emergency procurement methodology is intended for unforeseen situations"; and, "Poor

planning resulting in an emergency situation does not meet the proper criteria for an emergency procurement." In the following examples, agencies have not shown an unforeseen emergency.

- The FY 85-86 Appropriation Act mandated a December 1 deadline for submitting budget and policy information to legislative committees. An agency did not establish its priorities in this area until August 22. On September 5, the agency made an emergency procurement of a \$37,000 consultant contract so that it could meet the December 1 deadline. Information required by the Appropriation Act is not an unforeseen emergency.
- A university official stated that the emergency procurement of 200 mattresses was justified because rooms could not be inspected while students were occupying them. However, the rooms could have been inspected during vacations and officials could have foreseen that some mattresses would have to be replaced every year.
- On December 9, 1985, an agency procured library shelving. Almost 11 weeks later, the agency justified the installation of the shelving as an emergency procurement.
- An emergency procurement of equipment and building materials for a renovation was justified "so that **chronic** overcrowding can be alleviated." [Emphasis Added]
- A rental van to transport performers to a scheduled cultural festival was procured as an emergency because the agency motor pool did not have a van available at that time. Lack of planning is further shown by the fact that the emergency rental was to have been for one day, but was extended to one week.

If emergency procurements are used when agencies have time to solicit sealed bids or proposals, competition is reduced and the state is less likely to obtain favorable prices.

RECOMMENDATION

- (8) STATE AGENCIES SHOULD USE EMERGENCY PROCUREMENTS ONLY IN THE EVENT OF UNFORESEEN EMERGENCY SITUATIONS.

Procurements Under \$1,500

Forty-five (30%) of the 148 procurements examined were treated as emergency procurements when small purchase procedures

would have been more appropriate. Section 11-35-1550 of the South Carolina Code of Laws and Budget and Control Board Regulation 19-445.2100 set forth simplified procedures for small purchases. The requirements for purchases over \$500 but less than \$1,500 are satisfied when the purchaser obtains two oral or written quotes from qualified suppliers, and when the purchaser indicates that the procurement is to the state's advantage.

According to General Services officials, there should be no emergency procurements under \$1,500. The requirement for competitive procurements under \$1,500 is fulfilled by making telephone calls to two potential suppliers, even if one of the suppliers does not have the needed item. This procedure is less time-consuming than following the requirements for emergency procurements. For an emergency procurement, an agency must make at least one telephone call, have the authorized official complete a written justification statement, and subsequently report the procurement to the Materials Management Office.

When emergency procurements rather than small purchase procedures are used for procurements between \$500 and \$1,500, the potential for competition is reduced because the agency is not required to contact at least two potential vendors. In addition, the reporting burden on the agencies and the oversight responsibilities of the Division of General Services are increased.

RECOMMENDATION

- (9) THE DIVISION OF GENERAL SERVICES SHOULD ISSUE A MEMO TO AGENCIES CLARIFYING THE CIRCUMSTANCES UNDER WHICH SMALL PURCHASE PROCEDURES, RATHER THAN EMERGENCY PROCUREMENT PROCEDURES, SHOULD BE USED.

Procurements Not Legitimate Emergencies

In at least 7 (5%) of 148 cases examined, agencies made emergency procurements when the situations posed no serious or immediate threats to state government. State procurement

regulations require that for an emergency procurement to be justified, the situation must "seriously threaten the functioning of state government, the preservation or protection of property, or the health or safety of any person." Another condition for the use of emergency procurements is that the threat be "immediate." If the threat is not serious and immediate, other procurement procedures should be followed. The following emergency procurements could have been purchased through standard procedures.

- The repair of an air compressor was declared an emergency only after it had been out of service for several weeks.
- The justification statement for repair of a cafeteria ice cream machine did not state how a delay in repairs would pose an immediate and serious threat to state government.
- The reupholstering of furniture was declared an emergency.

When goods or services that could be procured through standard procedures are treated as emergencies, both competition and cost efficiency may be reduced. Emergency procurement procedures require "as much competition as is practicable under the circumstances," but do not specify a particular number of vendors who must be contacted. On the other hand, standard procurement procedures for procurements over \$500 are not open to interpretation, with the number of quotes required specified by regulation.

If an immediate response is required from a vendor, cost efficiency might be reduced because fewer vendors could respond. In addition, vendors might charge more if they have to rush order parts or work overtime to meet an agency's "emergency" deadline.

In some situations, agencies may enter into emergency procurements because they are unaware of other options that meet their needs. According to the Materials Management Office, when procurements do not fit the strict criteria for emergencies but require a very quick response, agencies can use a bid period as

short as seven days. Furthermore, procurements less than \$2,500 can be handled quickly with small purchase procedures.

RECOMMENDATIONS

- (10) AGENCIES SHOULD ENSURE THAT EMERGENCY PROCUREMENTS ARE USED ONLY WHEN THERE ARE IMMEDIATE AND SERIOUS THREATS TO THE STATE.
- (11) WHEN EMERGENCY PROCUREMENTS ARE NOT WARRANTED, OTHER METHODS, INCLUDING SMALL PROCUREMENT PROCEDURES AND SHORTENED BID TIMETABLES, SHOULD BE USED, AS APPROPRIATE.

Inadequate Justifications

In the case of 15 emergency procurements, the Audit Council needed information that was not in the justification statements, so the complete files were requested. In 11 of the 15 emergency procurements sampled, agency files did not document the basis of the emergency or, more frequently, did not document the reason for the selection of the particular vendor. The Procurement Code requires a written determination of "the basis of the emergency and for the selection of the particular contractor."

When the procurement files do not establish the basis of the emergency, it is difficult to determine if emergency procedures were truly needed. In addition, when no reason is given for selecting a particular vendor, it cannot be known if competition was solicited.

RECOMMENDATION

- (12) THE DIVISION OF GENERAL SERVICES SHOULD CHANGE THE EMERGENCY PROCUREMENT JUSTIFICATION FORM TO REQUIRE DOCUMENTATION OF THE BASIS OF THE EMERGENCY AND THE REASON FOR SELECTION OF THE PARTICULAR VENDOR.

Late Justifications

In 15 (10%) of 148 emergency procurements examined, justification statements either were not dated, or were signed an average of 15 days after the agency's funds were committed. Procurement regulations state that emergency procurements are only appropriate when the need cannot be met through other procurement methods. Except in cases of extreme urgency, approval by the agency director or the Chief Procurement Officer should be obtained prior to the procurement.

When justification statements are undated, it is difficult to tell if the emergency determinations were approved at the proper stage in the procurement process. In addition, procurements justified after the fact indicate that authorized individuals did not make the determination that emergency procurement methods were necessary.

RECOMMENDATIONS

- (13) STATE AGENCIES SHOULD OBTAIN THE NEEDED APPROVALS BEFORE COMMITTING FUNDS FOR EMERGENCY PROCUREMENTS.
- (14) IF AGENCIES HAVE OBTAINED TELEPHONE APPROVAL, THIS SHOULD BE NOTED ON THE JUSTIFICATION STATEMENT TO AVOID THE APPEARANCE OF AN AFTER-THE-FACT JUSTIFICATION.

CHAPTER IV
EXEMPTIONS FROM THE PROCUREMENT CODE

There are 78 exemptions from the competitive purchasing requirements of the Procurement Code. These exemptions consist primarily of goods and services, and also include the entire operations of four state agencies.

Eleven of the exemptions were established in state law in 1981. One was established in state law in 1984. State law permits the State Budget and Control Board to establish additional exemptions. The remaining 66 exemptions have been established by the Board, usually upon recommendation of the Division of General Services.

Exemptions Needing Review

The Audit Council reviewed a sample of Procurement Code exemptions. The following are examples of some exemptions that should be examined further as to their continued necessity.

Agencies

All purchases by the State Ports Authority, Public Service Authority, Railways Commission, and Research Authority are exempt. Combined operating expenses for these agencies are approximately \$310 million per year. The need for agency-wide exemptions has not been adequately demonstrated. These exemptions are established in state law. However, the law does not state the rationale for agency-wide exemptions. These exemptions include items such as paper products, typewriters, furniture, and computers, which must be purchased competitively by other state agencies. Alabama, Georgia, Mississippi, North Carolina, and Virginia do not have agency-wide exemptions for their ports authorities. There may be situations where limited exemptions are necessary. For example, state law permits the Research Authority to maintain confidentiality when necessary for locating companies in its research parks.

Higher Education

Purchases with funds from higher education athletic contests, canteens, bookstores, and student organization activities are exempt, except when used for construction-related expenses. Although some products, such as certain athletic equipment, may not be suitable for competitive purchasing, this does not justify an exemption for all products purchased. Alabama, Mississippi, and Virginia do not exempt athletic departments from competitive purchasing. Also, at college canteens and bookstores in Alabama, Mississippi, and North Carolina, only items purchased for resale, such as food, beverages, and books, are exempt.

Insurance Reserve Fund

The Insurance Reserve Fund (IRF), which spent more than \$22 million for primary and reinsurance premiums in FY 86-87, is exempt from competitively purchasing these contracts from insurers and reinsurers. However, all insurance contracts which have expired since 1983 have been put out for bid on a competitive basis. The exemption has only been used twice since 1983. In both cases, competitive bids were solicited. In the first case, no responsive bids were received and, in the second, bids received were considered too high. The IRF then requested approval from the Budget and Control Board to negotiate with insurance companies for these contracts. Since most contracts are competitively bid, an exemption from all requirements of the Procurement Code may not be necessary. A modification of §11-35-1540 of the South Carolina Code of Laws to allow negotiations of insurance contracts after unsuccessful bidding would address the problems discussed above.

Professional Services

Seventeen professions are exempt from the provisions of the Procurement Code, which means that agencies can procure these professional services without soliciting competition, and without

documenting price comparisons. These include a variety of occupations such as medical doctors, actuaries, speech pathologists, nurses, and investment counselors.¹ Also, hospital and medical clinic services are exempt. In FY 86-87, medical and health services alone cost the agencies in the Audit Council sample over \$6.5 million.

An official with the State Auditor's Office stated that the cost of contracted audits for the technical school system dropped 25% to 50% when competition was introduced, with no decrease in quality. In a 1987 report, the United States General Accounting Office found that governmental units "are almost three times as likely to receive an audit that meets professional standards" when the procurement process includes competition.

Many state and local governments have introduced competitive pricing methods successfully for professional services, and a nationally recognized purchasing expert advocates such methods for all professional services. One argument offered for the continuation of these exemptions is that quality will suffer if agencies are forced, through a bidding process, to accept the lowest bid. However, in South Carolina, the Request for Proposal process allows quality to be one of several factors, or even the chief factor, considered in awarding contracts.

Interviews with South Carolina state purchasing officials provide support for the use of the competitive sealed bidding process for at least some professionals now exempt from competition. For example, two procurement officials recommended review of the exemption for nurses.

Also, inconsistencies can be found in comparing exempt to nonexempt professions. For example, nurses and psychiatrists

¹Also included in the list of exempt professionals are attorneys and accountants; however, the Attorney General's Office and State Auditor's Office, respectively, review procurement or procure services of these professionals for state agencies. The Attorney General's Office reviews private attorneys' fees for reasonableness and cost-effectiveness. Most auditing contracts are procured competitively by the State Auditor's Office.

are exempt and psychologists are not exempt. Criteria set out in an October 1984 letter from a Chief Procurement Officer (CPO) could be used in periodic review (see p. 26) of each professional service exemption. The CPO explained his recommendation against an exemption for psychologists:

. . . due to the availability of services of this nature. There are sufficient service providers who are licensed, offer service at various fees per hour or task, could respond to a competitive sealed bid or proposal and can be acquired in a competitive manner. An exemption traditionally is granted for a commodity or service which does not lend itself to the competitive principles of the Code.

Fresh Food Products

Fresh fruits, vegetables, meat, fish, milk, and eggs are exempt; however, some agencies purchase these items competitively which indicates that these exemptions should be reexamined. For example, the Department of Mental Health (DMH) purchases fresh fruits, vegetables, meat, and milk competitively. Expenditures by DMH on fresh meat and milk are approximately \$820,000 per year. Further, each year the Division of General Services purchases fresh eggs, chicken, and meat, costing approximately \$880,000, on a competitive basis.

Aircraft Maintenance

State law unnecessarily exempts aircraft maintenance services for the state Aeronautics Commission. Since all other agencies owning aircraft must follow the Procurement Code when purchasing maintenance services, this exemption is not necessary for the Aeronautics Commission. The Audit Council recommended removal of this exemption in a 1986 report on the Aeronautics Commission.

Criteria for Exemptions

The Procurement Code contains no criteria defining the conditions under which exemptions should be granted or denied.

Officials from the Division of General Services stated that, in their view, exemptions are appropriate when there are no significant advantages to be gained from competition. In addition, the specific advantages from reduced competition should be shown. Written criteria would help ensure that exemptions are appropriate and consistent.

Review of Exemptions

State law does not require that exemptions from the Procurement Code be reevaluated on a periodic basis. As a result, there is inadequate assurance that each exemption from the Procurement Code continues to be necessary. Analysis would show whether market conditions and agency practices have changed since the exemptions were enacted. Unnecessary exemptions from competitive purchasing requirements may result in higher prices with no offsetting benefits.

Each exemption's continued necessity could be ensured if state law required that it expire periodically, and that it be renewed by the Budget and Control Board. The Division of General Services, which routinely evaluates proposed exemptions, would be the appropriate agency to reevaluate existing exemptions, with input from interested state agencies.

RECOMMENDATIONS

- (15) THE GENERAL ASSEMBLY MAY WISH TO CONSIDER AMENDING STATE LAW TO DEFINE THE CONDITIONS UNDER WHICH EXEMPTIONS FROM THE PROCUREMENT CODE SHOULD BE GRANTED.

- (16) THE GENERAL ASSEMBLY MAY WISH TO CONSIDER AMENDING STATE LAW TO REQUIRE THAT EACH EXEMPTION FROM THE PROCUREMENT CODE EXPIRE AFTER A SPECIFIC PERIOD OF TIME AND THAT, AFTER REVIEW BY THE GENERAL SERVICES DIVISION, EXEMPTIONS BE RENEWED AS NEEDED BY THE BUDGET AND CONTROL BOARD.

CHAPTER V
OTHER PROCUREMENT ISSUES

In the course of this review, the Audit Council examined several additional issues including the protest process for challenging procurement decisions and the existence of two automated systems containing procurement information. The Council also found that purchases made by the Budget and Control Board are not audited for compliance with state procurement laws and regulations. These issues are discussed below.

Procurement Audits

The divisions of the State Budget and Control Board are not periodically audited for compliance with state procurement laws and regulations. Purchases of approximately \$315 million in FY 85-86 would have been subject to review in a procurement audit. This includes purchases for the internal operations of the Board and purchases made by the Board for other agencies.

The Board's Office of Audit and Certification conducts procurement audits of state agencies. To avoid conflict of interest, this office does not audit divisions of the Board. There are ten divisions of the Board, including General Services, Human Resource Management, Information Resource Management, and Retirement Systems. For internal operations in FY 85-86, the divisions had purchases of approximately \$52 million which would be subject to review in a procurement audit.

The Materials Management Office (MMO) of the Budget and Control Board's Division of General Services buys goods and services for state agencies when costs exceed the agencies' certification limits. MMO purchases for agencies other than the Budget and Control Board, which were approximately \$263 million in FY 85-86, also have not been reviewed in a procurement audit.

No arrangements have been made for other state agencies or private firms to conduct procurement audits of the Board. If the

Board received procurement audits, as do other state agencies, there would be increased public accountability.

RECOMMENDATION

- (17) THE BUDGET AND CONTROL BOARD SHOULD CONSIDER HAVING PERIODIC AUDITS CONDUCTED OF ITS DIVISIONS' PURCHASING PRACTICES BY AN OUTSIDE INDEPENDENT AUDITING ENTITY.

Two Procurement Information Systems

Two agencies maintain systems containing state procurement information and they categorize the information differently. As a result, the reporting burden on agencies is increased and oversight of state purchasing is limited.

The Comptroller General's information system classifies all expenditures by an "object of expenditure code" and can track expenditures by agency, recipient, and other categories. The Division of General Services's purchasing system, which is nearing completion, will track sole source and emergency procurements by "commodity code" number. It will also maintain information on competitive procurements that General Services handles for other agencies, that is, procurements above the agencies' certification limits.

The reporting burden on agencies is increased because both General Services and the Comptroller General's Office require similar information. However, the information often cannot be compared because it is not categorized the same way by the two systems. For example, if information about procurement of data processing consultants is needed, the dollar amount of sole source contracts for data processing consultants can be determined by General Services. However, the total amount spent on data processing consultants (including those that are competitively procured) cannot be determined since a single category in the Comptroller General's system includes both data processing consultants and program maintenance. Therefore, the

ratio of noncompetitive to competitive procurements cannot be compared.

Another example of the difficulty of comparing information on the two systems is funds spent for data processing equipment repairs. The sole source procurements in this category can be obtained by adding two subcategories of commodity codes in the General Services's system. However, this cannot be compared to the total spent on data processing repairs because the Comptroller General's system includes in one category all repairs for any type of equipment or building.

Furthermore, oversight of state purchasing is decreased because not all purchasing information is contained on one system. The state could benefit if the General Services's system contained information for all procurements, including competitive purchases made by agencies themselves, and the method used for each procurement. This would help General Services to determine if new term contracts should be developed. The Office of the Auditor General in Michigan has recommended that their Office of Purchasing maintain information about the state's purchase of commodities so the state could identify the large volume commodities that might warrant term contracts.

If more complete information were contained on the General Services' system, it would also help to determine if certain exemptions from the competitive bid requirements of the Procurement Code were still necessary. For example, exempted items (such as auditing services by accountants, or purchases of fresh fruits, vegetables, or meats) need not be competitively procured, but may be if the agency desires. The proportion of these exempt goods or services that are competitively procured cannot be determined. With this information the Budget and Control Board could determine, by tracking the purchase history of a particular commodity, if the exemption is still necessary.

RECOMMENDATION

(18) THE GENERAL ASSEMBLY MAY WISH TO CONSIDER APPOINTING A STUDY COMMITTEE CONSISTING OF MEMBERS OF THE COMPTROLLER GENERAL'S OFFICE, THE MATERIALS MANAGEMENT OFFICE AND SELECTED AGENCIES. THIS COMMITTEE SHOULD DETERMINE WHETHER THE TWO PROCUREMENT INFORMATION SYSTEMS SHOULD BE MODIFIED, OR THE REPORTING REQUIREMENTS FOR AGENCIES CHANGED, TO ENHANCE THE STATE'S ABILITY TO USE PROCUREMENT INFORMATION.

Protest Process

The Audit Council reviewed the process established by state law for vendors to protest procurement decisions. This review included protested procurements, interviews with South Carolina officials, and a survey of other states. The Audit Council found no material problems in the administration of this process.

The protest process permits a vendor who believes he has been aggrieved to protest in writing to the appropriate chief procurement officer (CPO) within a specified period of time. The CPO reviews the protest and makes a decision on its validity, after which any adversely affected party may request a formal administrative review by the Procurement Review Panel. In FY 85-86, 52 (89%) of 58 protests were resolved at the CPO level.

The Procurement Review Panel, composed of members from the Budget and Control Board, the Legislature, and the general public, assesses the validity of protests. Section 11-35-4210 of the South Carolina Code of Laws permits the Review Panel to order:

. . . award of a reasonable reimbursement amount including reimbursement of bid preparation costs, and may order such other and further relief as justice dictates including, but not limited to a reaward of the contract or a rebid of the contract.

Decisions of the Review Panel may be appealed to the courts.

One area which could be clarified is the state's authority to impose damages for frivolous protests.

Frivolous Protests

South Carolina law does not grant the Procurement Review Panel the specific authority to award damages or costs to opposing vendors or the state, when injured by frivolous protests of procurement decisions. Frivolous protests cause the state and certain vendors to incur unnecessary costs, including staff time and attorney fees.

Black's Law Dictionary states:

A "frivolous appeal" is one presenting no justiciable question and so readily recognizable as devoid of merit on face of record that there is little prospect that it can ever succeed.

The Federal Rules of Appellate Procedure permit the awarding of damages and single or double costs if a federal court determines that an appeal is frivolous.

Since §11-35-4210 (see p. 30) does not specifically authorize the award of damages or costs to parties injured by frivolous protests, vendors are less likely to be deterred from filing such protests. South Carolina's three chief procurement officers stated that some vendors have filed protests which they consider frivolous. In one case reported, for example, a vendor admitted he failed to comply with nine mandatory specifications, yet he filed a protest. Resolving the protest consumed 14 state employee staff days. To date, the Procurement Review Panel has not awarded damages or costs to an injured vendor or the state against any vendor filing a frivolous protest.

RECOMMENDATION

(19) THE GENERAL ASSEMBLY MAY WISH TO CONSIDER LEGISLATION GIVING SPECIFIC AUTHORITY TO THE PROCUREMENT REVIEW PANEL TO AWARD DAMAGES OR COSTS TO INJURED VENDORS AND THE STATE AGAINST VENDORS FILING FRIVOLOUS PROTESTS.

APPENDICES

APPENDIX A
LIST OF TABLES

<u>Table</u>	<u>Page</u>
1 Statewide Sole Source Procurements by Agency.....	4
2 Statewide Sole Source Purchases FY 83-84 Through FY 86-87.....	6
3 Sample of Sole Source Consultants, FY 85-86.....	9
4 Emergency Procurements of Eleven Agencies.....	15

APPENDIX B

STATE OF SOUTH CAROLINA
BUDGET AND CONTROL BOARD
DIVISION OF GENERAL SERVICES
1201 MAIN STREET, SUITE 420
COLUMBIA, SOUTH CAROLINA 29201
(803) 737-3880

CARROLL A. CAMPBELL, JR.
GOVERNOR

GRADY L. PATTERSON, JR.
STATE TREASURER

EARLE E. MORRIS, JR.
COMPTROLLER GENERAL



RICHARD W. KELLY
DIVISION DIRECTOR

JAMES M. WADDELL, JR.
CHAIRMAN,
SENATE FINANCE COMMITTEE

ROBERT N. McLELLAN
CHAIRMAN,
HOUSE WAYS AND MEANS COMMITTEE

JESSE A. COLES, JR., Ph.D.
EXECUTIVE DIRECTOR

March 30, 1988

George L. Schroeder
Director
Legislative Audit Council
620 NCNB Tower
Columbia, South Carolina 29201

Dear Mr. Schroeder:

Thank you for sharing with me your audit entitled "A Statewide Review of Noncompetitive Procurements", and giving me an opportunity to comment thereon. Although this is not an audit of the Division of General Services, it concerns a subject area that we are vitally interested in since we work with it on a daily basis in assisting state agencies in the procurement process and through our auditing role. Let me say how much we appreciate the input of your organization on the subjects covered by the report which addresses many areas where we have also recognized the need for reform. We look forward to working with you on these areas of common interest.

The Division of General Services is in full concurrence with the conclusions of the Legislative Audit Council and offers specific comments on the following recommendations:

1. Recommendation 3

The Division of General Services agrees with the need for agencies to correctly identify employees versus consultants, and we have treated this topic in previous audit reports of individual agencies. We have attempted to define the distinction between employee and consultant services in Budget and Control Board Regulation 19-445.2025 and will work with the Division of Human Resource Management to provide further clarification which your audit has shown is needed by the agencies.

2. Recommendation 6

We agree that agency explanations for sole source purchases should be complete before the purchases are made. In conducting its audits, the Audit and Certification Section of this office looks both at the adequacy of the sole source documentation and at the merits of the transaction itself before any sole source procurement is given a clean bill of health.

3. Recommendation 7

The Division of General Services has examined existing sole source procedures and concurs in Recommendation 5 that agencies should give prior public notice of sole source purchases to ensure that there is no other vendor who can provide the needed good or service. If this recommendation is adopted and agencies are required to advertise sole source contracts, this recommendation would become superfluous.

4. Recommendation 8

As concerns emergency procurements only being used in the event of unforeseen emergency situations, the Audit and Certification Section has long recognized that many emergencies result from poor planning. Nevertheless, regardless of the cause, and the fact that the situation may have been foreseeable, by the time the procurement begins there may be a true emergency. In our audits we recognize poor planning as a separate issue from determining whether the situation is a true emergency. Our approach recognizes the fact that good planning will not always occur and that the emergency process needs to be available for those instances where an agency fails in performing its planning function properly, but does not allow the agency to escape in this situation with a clean audit.

5. Recommendation 9

The Division of General Services will assist all agencies in obtaining a full understanding of small purchase and emergency procedures. We do recognize the difference between these methodologies. It is not always possible for an agency to know at what dollar level an emergency procurement will be before the service is performed. In our contact with agencies on this subject we will reiterate that even though an emergency exists, the Code requires as much competition as practicable regardless of the dollar level of the procurement.

6. Recommendation 15

Section 11-35-710 of the Procurement Code provides that the Budget and Control Board may grant certain types of exemptions from the Procurement Code upon the recommendation of the Division of General Services. In determining whether an exemption should be granted, we examine the advantages and disadvantages of competition being sought. In situations where goods or services are consistently procured through sole source procedures and competition cannot be obtained, or where other unusual factors indicate that following procurement procedures is not in the State's best interest, an exemption from the Code may be recommended. This examination has become particularly stringent over the past year and a half.

It is important to distinguish the exemptions granted by the Board from those granted by the General Assembly. The only two exemptions granted by the Board in the list included in this audit report were those for the Insurance Reserve Fund and for certain professional services. Since 1983,

Mr. Schroeder
March 30, 1988
Page Three

the Insurance Reserve Fund has obtained competition in soliciting its contracts, and all contracts solicited in the last calendar year were handled by the Materials Management Office in strict compliance with the Procurement Code. As for professional services exemption, the Division of General Services agrees that these should all be reevaluated.

7. Recommendation 17

The Division of General Services has also recognized the need for an audit of the procurement procedures of the Materials Management Office and the divisions of the Budget and Control Board. These audits will begin on April 1, 1988, and will be conducted under the direction of the Budget and Control Board's internal audit staff which reports directly to the Executive Director of the Board.

8. Recommendation 18

The Division of General Services would welcome a study committee to determine whether the information systems of the Comptroller General's and Materials Management Offices could be made more uniform, however, this goal may be difficult to reach. The commodity code structure used by the Materials Management Office is by necessity more detailed than the Comptroller General's object code. We will participate in and assist with the study in any way that we can.

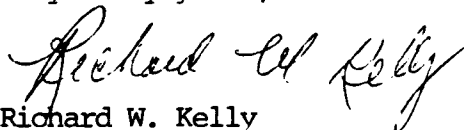
9. Recommendation 19

We completely concur in the recommendation in this regard since the delays caused by frivolous protests cost the State time and money. We suggest that the Legislative Audit Council also seek the input of the Procurement Review Panel since they are the body that will ultimately implement this recommendation.

We also concur with your conclusion that the sole source and emergency procurement procedures are generally being used by agencies in compliance with State law. As your recommendations point out, some minor statutory changes and further education of the agencies should go a long way in fine tuning these procurement processes.

We have enjoyed working with your professional staff during this audit process and are anxious to assist in implementing these recommendations in any way that we can.

Very truly yours,


Richard W. Kelly



MEDICAL UNIVERSITY OF SOUTH CAROLINA
171 Ashley Avenue
Charleston, South Carolina 29425-1024

April 12, 1988

Mr. George L. Schroeder
Director
Legislative Audit Council
629 NCNB Tower
Columbia, South Carolina 29201

Dear Mr. Schroeder:

I appreciate your allowing me the opportunity to comment on your report entitled "Statewide Review of Non-Competitive Procurement". We would like to take exception to your determination on three sole source procurement items included in your sample.

Kodak Ektaprint K Toner

This toner was purchased in accordance with General Services Regulation 19-445.2105, Subsection B, Paragraph (1). This regulation states that chemicals used must be compatible with the equipment purchased. Kodak recommends using Kodak Toner in order to avoid maintenance problems with the equipment.

Consultant Services

Dr. Robert A. Jenkins, Ph.D. was engaged by the University to assist in developing its Marine Biomedical Research Program. Dr. Jenkins' expertise and experience make him uniquely qualified to provide guidance in developing this program. Dr. Jenkins has a great deal of experience as a Protozoologist at the Woods Hole Marine Biological Laboratory. He has developed such programs within the framework of a state University.

Preventive Maintenance - Telex Terminals

At the time we entered into this agreement, there were no other suppliers of this service who could demonstrate an ability to keep these terminals operational to our specifications with the exception of the manufacturer. Selecting any other supplier would have put the warranties on the equipment in jeopardy.

Communication Equipment

After careful review of this purchase, we agree that a part of the order could have been competitively bid. This was an oversight on our part.

I was very pleased that the Medical University was found to be managing its sole source procurements in accordance with state regulations. It is very important to our institution to retain the ability to make sole source acquisitions. It saves money for the University and suppliers when the institution has carefully evaluated its needs and determines that a sole source procurement is appropriate. We also fully support the concept of competitive bidding in all cases where more than one supplier can provide the needed service or supply in an equally acceptable manner.

Sincerely,



Marion E. Woodbury
Vice President for Business Affairs

MEW/dgw

cc: Mr. Richard W. Kelly, Director, Division of General Services
Mr. Donald L. McMillin, Division of General Services
Mr. R. Voight Shealy, Division of General Services